

September 14, 2007

**TRADE FIXTURES DEFINED AS PERSONAL PROPERTY
FOR ASSESSMENT PURPOSES**

Purpose. To outline and incorporate Neb. Laws 2007, LB 334 §§ 13 and 14 which amended Neb. Rev. Stat. Sections 77-103 (real property) and 77-105 (personal property) (R.S. Supp., 2006).

Definitions. Neb. Rev. Stat. Section 77-103 provides that real property shall mean:

- (1) All land;
- (2) All buildings, improvements and fixtures, except trade fixtures.
- (3) Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used, for residential, office, commercial, agricultural, or other similar purposes, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business;
- (4) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil or gas leases; and
- (5) All privileges pertaining to real property described in subdivisions (1) through (4) of this section.

(emphasis added.)

Neb. Rev. Stat. Section 77-105 provides that personal property shall mean the following.

The term tangible personal property includes all personal property possessing a physical existence, excluding money. The term tangible personal property also includes trade fixtures, which mean machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased. The term intangible personal property includes all other personal property, including money.

(emphasis added.)

Procedure and Implementation. Trade fixtures are defined as items of personal property placed

upon or annexed to a parcel of real property by a tenant or owner for the purpose of carrying on a trade or business. Trade fixtures support the business function of the parcel rather than the parcel itself.

Since trade fixtures are personal property, they differ from other fixtures in that they may be removed by the tenant or the owner from the real property even if attached. However, fixtures attached to the real property with the intent of remaining indefinitely are real property. Remaining indefinitely means that the fixture is intended to remain attached to the real property until it is worn out, replaced by a more suitable replacement, or the use of the parcel changes.

Example: Meat packing facility

Trade fixtures that are unique to, and used in, include but are not limited to, head washer pressure pumps, carcass wash pumps, kill floor head conveyors, kill chains, deboning machines, hide defleshers, hide press, cattle pen water sprayers, saws and knives.

Fixtures, to be treated as real property, would include items which are common to the maintenance and operation of structures or buildings, such as central air conditioning, heating systems or ordinary plumbing and plumbing fixtures.

Further, since trade fixtures are personal property, they are exempt from the permanence test (annexation, appropriation, and intent), and are not to be considered part of the real property. Nor will trade fixtures constitute a capital improvement for property assessment purposes. However, property not included within the description of trade fixtures would still be subject to the three-part test of annexation, appropriation, and intent to determine whether the property is real or personal.

Conclusion. Trade fixtures are personal property and shall be reported to the county assessor on a Nebraska Personal Property Return and a Nebraska Net Book Value Personal Property Schedule. The county assessor shall administer the assessment of trade fixtures in the same manner as other personal property. Since the new statutory definition may apply to items that have previously been assessed as real property, there may be a decline in valuation as the trade fixtures may be fully depreciated and no longer taxable for personal property assessment purposes.

APPROVED:

/s

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